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Attorneys for Defendant
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

THOMAS K. HIGUCHI, as Personal) CIVIL NO. 11-00709 ACK BMK
Representative of the Estate)
of SUZANNE KEIKO HIGUCHI also) DEFENDANT UNITED STATES OF
known as SUZANNE K. HIGUCHI,) AMERICA'S ANSWER TO THIRD
Plaintiff,) PARTY DEFENDANT BIG ISLAND
vs.) RESTAURANT GROUP, INC.'S CROSS
) CLAIM FILED 10/15/12;
) CERTIFICATE OF SERVICE
)
UNITED STATES OF AMERICA,)
)
Defendant.)

))
UNITED STATES OF AMERICA,)
)
Third Party)
Plaintiff,)
vs.)
))
BIG ISLAND RESTAURANT)
GROUP, INC.)
))
Third Party)
Defendant.)
))

))

**DEFENDANT UNITED STATES OF AMERICA'S ANSWER TO
THIRD PARTY DEFENDANT BIG ISLAND RESTAURANT GROUP, INC.'S
CROSS CLAIM FILED 10/15/12**

Comes now the Defendant UNITED STATES OF AMERICA, by and through its attorneys Florence T. Nakakuni, United States Attorney and Harry Yee, Assistant United States Attorney, and for its answer to THIRD PARTY DEFENDANT BIG ISLAND RESTAURANT GROUP, INC.'S (hereinafter BIRG) CROSS CLAIM FILED 10/15/12, alleges and avers as follows:

1. The allegations of paragraphs 1-4 are denied.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails to state a cause of action.

SECOND DEFENSE

THIRD PARTY DEFENDANT BIRG has failed to state a claim upon which relief can be granted.

THIRD DEFENSE

Any injury or injuries sustained by the Plaintiff were caused in whole or in part by and through the carelessness and negligence of THIRD PARTY DEFENDANT BIRG.

FOURTH DEFENSE

Any injury sustained by Plaintiff was not caused by carelessness or negligence on the part of the United States, its agents, servants or employees, but was caused solely by and through the negligence of the THIRD PARTY DEFENDANT BIRG.

FIFTH DEFENSE

The liability of the United States and responsible parties, named or unnamed, if any, should be apportioned according to their respective degrees of fault, and the liability of these Defendants or unnamed and indispensable third parties, if any should be reduced accordingly.

SIXTH DEFENSE

All future damages, if any, must be reduced to present value.

SEVENTH DEFENSE

The Federal Tort Claims Act prohibits recovery of attorney's fees.

EIGHTH DEFENSE

Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for prejudgment interest against the United States of America.

NINTH DEFENSE

The United States reserves the right to amend its Answer with additional defenses of which it may become aware as discovery progresses and to raise any other matter constituting an avoidance or affirmative defense.

WHEREFORE, Defendant prays that a judgment of reasonable costs be rendered for the suit and for such other, and further relief as this Court may deem just.

DATED: December 14, 2012, at Honolulu, Hawaii.

FLORENCE T. NAKAKUNI
United States Attorney
District of Hawaii

/s/ Harry Yee
By HARRY YEE
Assistant U.S. Attorney

Attorneys for Defendant
UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on December 14, 2012, and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known addresses:

Served Electronically through CM/ECF:

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Attorneys for Plaintiff
THOMAS K. HIGUCHI, as Personal Representative
of the Estate of Susan Keiko Higuchi, also
Known as Suzanne K. Higuchi

DATED: December 14, 2012, at Honolulu, Hawaii.

FLORENCE T. NAKAKUNI
United States Attorney
District of Hawaii

/s/ Harry Yee
By _____
HARRY YEE
Assistant U.S. Attorney

Attorneys for Defendant
UNITED STATES OF AMERICA